

# Notice of Allowability

Application No.

10/767,459

Examiner

Henry M. Johnson, III

Applicant(s)

ANDERSON ET AL.

Art Unit

3739

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to telephonic interview of 02/09/2007.
2. ☒ The allowed claim(s) is/are 69-86.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 020807
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 20070209.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Schaffer on February 9, 2007.

The application has been amended as follows:

In the specification, paragraph 0053 has been replaced with:

Reference is now made to Fig. 3A, which illustrates an apparatus 200 to enable treatment of selected cells in the dermis or hypodermis layers in the skin. Hand piece 260 may hold or secure the collected, stretched, or pinched skin in place, for example, between energy transmitting elements 220 and 230. For example, hand piece 260 of apparatus 200 may contact the skin 280, and suck up or otherwise secure a section or fold 210 of the skin and underlying tissue 290 into an area 250 of hand piece 260, adjacent to at least one of energy transmitting elements 220 and 230, or between energy transmitting elements 220 and 230. The energy transmitting elements 220 and 230 receive electrical energy, for example, from electrical energy source 300 which is electrically connected thereto. A fold of skin 210 maybe secured, for example, pinched, grabbed, squeezed, nipped, hooked, seized, isolated or otherwise held by pinching arms 205 or tissue holding mechanisms of apparatus 200. Energy transmitting elements 220 and 230 maybe attached or otherwise associated with pinching arms 205. Apparatus 200 may, for example, establish a pathway, for example an electrical pathway, through a secured fold or portion of skin 210 between a plurality of energy transmitting elements, for example, energy transmitting elements 220 and 230.

In claim 80, line 2, "said secured portion of tissue" has been deleted and -- said collected portion of tissue -- has been inserted.

Replacement drawing sheets for Figure Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over was received on 2/9/2007 to include features required by the examiner.

The following is an examiner's statement of reasons for allowance: The prior art does not disclose or fairly suggest an apparatus and method for treating tissue that captures the tissue to be treated in a cavity between at least two electrodes using suction, the electrodes adapted to contact the captured tissue, and providing an electrical energy source connected to the electrodes and an optical energy source for radiating the tissue. The method includes the application of both optical energy and electrical energy to the tissue.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Henry M. Johnson, III  
Primary Examiner  
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